

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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**JOSEPH MADAFFERI,**

Plaintiff,

- against -

**A. DUIE PYLE, INC., et al.,**

Defendants.  
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**ORDER ADOPTING REPORT  
AND RECOMMENDATION**

19-cv-02233 (AMD) (RML)

**ANN M. DONNELLY**, United States District Judge:

On March 9, 2018, the plaintiff filed this action in the New York Supreme Court for Queens County seeking damages for injuries the plaintiff sustained in a motor vehicle accident allegedly caused by the defendants. (ECF No. 1-3.) On April 16, 2019, the defendants removed the action to this Court based on diversity jurisdiction. (ECF No. 1.)

In August of 2020, after more than a year of discovery, the plaintiff's counsel moved to withdraw, citing a breakdown in the attorney-client relationship and the plaintiff's failure to appear for two independent medical examinations. (ECF No. 16.) At a conference on September 22, 2020, the Honorable Robert M. Levy granted counsel's motion to withdraw and stayed the case for 90 days to give plaintiff time to retain new counsel. (*See* Minute Entry dated 9/22/2020.) Judge Levy set a conference for December 22, 2020 and warned the plaintiff that the case could be dismissed for failure to prosecute if he did not appear at the conference. (*Id.*)

No attorney has filed a notice of appearance for the plaintiff since his first attorney withdrew, and the plaintiff has not notified the Court that he intends to move forward with this action *pro se*. Nor did the plaintiff appear at the December 22, 2020 conference. On February 2, 2021, Judge Levy issued a *sua sponte* report and recommendation in which he recommends that

this case be dismissed for failure to prosecute. (ECF No. 22.) No objections have been filed to the report and recommendation, and the time for doing so has passed.

A district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). To accept those portions of the report and recommendation to which no timely objection has been made, “a district court need only satisfy itself that there is no clear error on the face of the record.” *Jarvis v. N. Am. Globex Fund L.P.*, 823 F. Supp. 2d 161, 163 (E.D.N.Y. 2011) (quotation marks omitted).

I have carefully reviewed Judge Levy’s thoughtful report and recommendation and find no error. Accordingly, I adopt his report and recommendation in its entirety, and order that the complaint be dismissed with prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.

**SO ORDERED.**

s/Ann M. Donnelly  
ANN M. DONNELLY  
United States District Judge

Dated: Brooklyn, New York  
February 22, 2021